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FILED
JUN 20 1959
JAMES R. BROWNING, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. [redacted] 132

VERNON RYALS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

APPEAL FROM THE FLORIDA APPELLATE COURT,
SECOND DISTRICT.

JURISDICTIONAL STATEMENT.

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STATUTES AND AUTHORITIES CITED

Florida Statutes Annotated—

Chapter 800.04 5, 6
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958.

No. .....

VERNON RYALS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

APPEAL FROM THE FLORIDA APPELLATE COURT, SECOND DISTRICT.

JURISDICTIONAL STATEMENT.

MAY IT PLEASE THE COURT:

The appellant, in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully represents:

(All references to the record are to the pages of the certified unprinted record prepared by the clerk

of the Florida Appellate Court, Second District, on file with the clerk of this Court. The record has not yet been printed.)

A.

OPINIONS BELOW.

There are no opinions, only "Per Curiam" Order of the Appellate Court below and Order of Florida Supreme Court dismissing appeal.

The final judgment of conviction and sentence entered by the Criminal Court of Record of Polk County, Florida, March 17, 1958, was recorded in Minute Book 46, page 480 (R. 198) (copy is attached hereto as App. "A"), and the "Per Curiam" affirmance by the Florida Appellate Court, Second District (reported in 109 S.2d 626), was entered February 20, 1959 (copy is attached hereto as App. "B"); the Florida Supreme Court entered an Order denying application for bail bond "for apparent lack of jurisdiction" in the cause, March 31, 1959 (copy is hereto attached as App. "C").

B.

NATURE OF PROCEEDING AND STATUTE PURSUANT TO WHICH IT IS BROUGHT.

Under Chapter 800.04, Florida Statutes Annotated, the County Solicitor filed, in the Criminal Court of Record, Polk County, Florida, on November 14, 1957, an Information containing three counts (R. 1-3) charging that Appellant on September 10, 1957, committed simultaneous assault on two named female children under the age of fourteen years; the second count charges simultaneous assault on the same two September 16, 1957; the third count charges an assault on one of the two October 1, 1957.

C.

FINAL JUDGMENT SOUGHT TO BE REVIEWED.

The final judgment of the Florida Appellate Court, Second District, sought to be reviewed was dated February 20, 1959 (R. 216) (See App. "B") (109 S.2d 626).

Notice of Appeal to the Florida Appellate Court, Second District, was filed in the Criminal Court of Record, Polk County, Florida, March 17, 1958 (R. 203); Petition for Rehearing denied by said Appellate Court, March 19, 1959, (R. 220); Notice of Appeal to invoke the discretionary jurisdiction of the Florida Supreme Court filed in said Appellate Court, March 26, 1959 (R. 221); Order of Florida Supreme Court dismissing said appeal, dated April 7, 1959 (R. 222); Notice of Appeal to the Supreme Court of the United States filed in said Appellate Court, May 4, 1959 (R. 226).

D.

STATUTORY PROVISION BELIEVED TO CONFER JURISDICTION OF APPEAL.

U.S.C.A., Title 28, Section 1257(2), (3) and 2103.

E.

CASES BELIEVED TO SUSTAIN JURISDICTON.

(a) The following decisions of this Court are believed to sustain jurisdiction of this appeal:

State of New York v. *Zimmerman*, 278 U.S. 63 (Syl. 2).

Murray Winters v. *People of the State of N. Y.*, 333 U.S. 507 (Syl. 6).

Western Union Tel. Co. v. *Chas. E. Hughes*, 203 U.S. 505 (Syl. 1).

Chicago B. & Q. R. Co. v. *People of the State of Ill. ex rel. Grimwood*, 200 U.S. 561 (Syl. 1).

Fiske v. *State of Kansas*, 274 U.S. 380 (Syl. 1).

Alma Lovell v. *City of Griffin*, 303 U.S. 444 (Syl. 2).

Honeyman v. *Hanan*, 300 U.S. 14 (Syl. 2).

Byron Thornhill v. *State of Ala.*, 310 U.S. 88 (Syl. 5).

Sullivan v. *State of Texas*, 207 U.S. 416 (Syl. 2).

(b) Of the Florida Appellate Court:

The Federal question of due process and equal protection of law under the Fourteenth Amendment to the Constitution of the United States was duly raised in time before the Florida Appellate Court, Second District:

Demeter Land Co. v. *Fla. Pub. Serv. Co.*, 99 Fla. 534 (Syl. 1).

Parker v. *Town of Callihan*, 115 Fla. 266 (Syl. 5).

Town of Monticello v. *Finlayson*, 156 Fla. 568.

H. W. Metcalf Co. v. *Martin, Tax Collector*, 54 Fla. 531 (Syl. 3).

Smith v. *Pattishall*, 129 Fla. 498 (Syl. 12).

In re Est. of Helen L. Weiss, Dec. 102 So.2d 154 (Text 155) (Syl. 1), 106 So.2d 411.

Florida District Courts of Appeal are not intermediate courts of appeal but courts of final appellate jurisdiction: *Lake* v. *Lake*, 103 So.2d 639 (Syl. 2).

(c) Discretionary jurisdiction of Supreme Court of Florida:

Seaboard Air Line R. Co. et al. v. *Branham*, 104 So.2d 356.

Appeal to the Supreme Court of Florida to invoke its discretionary power of review was necessary under Chapter 924.01, F.S.A., which provides:

"The only method of reviewing the proceedings in a prosecution by indictment or information shall be by appeal."

F.

FLORIDA STATUTE, VALIDITY OF WHICH IS INVOLVED.

Chapter 800.04, Florida Statutes Annotated, Vol. 22, page 46 of Pocket Part (Laws 1943, Chapter 21974, § 1, as amended Laws 1951, Chapter 26580, § 1) reads:

"LEWD, LASCIVIOUS OR INDECENT ASSAULT OR ACT UPON OR IN PRESENCE OF CHILD.

"Any person who shall handle, fondle or make an assault upon any male or female child under the age of fourteen years in a lewd, lascivious or indecent manner, or who shall knowingly commit any lewd or lascivious act in the presence of such child, without intent to commit rape where such child is female, shall be deemed guilty of a felony and punished by imprisonment in the state prison or county jail for not more than ten years."

G.

QUESTIONS PRESENTED BY THE APPEAL.

Where Appellant was charged under Chapter 800.04, F.S.A., in one Information containing three counts with five separate offenses against two named persons on three different dates, found guilty in three separate verdicts by the same jury, convicted and sentenced by the trial court and said sentence and conviction affirmed by the Florida Appellate Court, Second District, did the State of Florida abridge Appellant's privileges and immunities and deprive him of his liberty without due process of law and deny

him the equal protection of the law under the Fourteenth Amendment to the Constitution of the United States so as to render said Statute void in this case for unconstitutionality:

(a) Wh.. Appellant was charged with five separate offenses against two named persons, on three separate occasions, in one Information containing three counts, when said Statute provides for single off se only?

(b) Where the acts alleged in the three cour. of the Information are impossible of accomplishment, considering the physiological structure of the human body?

(c) Where the instructions of the trial court denied the jury freedom to find Appellant guilty or not guilty on less than all the separate offenses alleged in the three counts of the Information?

H.

STATEMENT OF THE CASE.

November 14, 1957, the County Solicitor filed in the Criminal Court of Record in Polk County, Florida, an Information containing three counts charging Appellant under Chapter 800.04, F. S. A., with committing five separate offenses against two named persons; two simultaneously on one occasion, two simultaneously on another and one on a third occasion (R. 1-3). Chapter 800.04, F. S. A., provides for single offense only.

The acts alleged are impossible of accomplishment, considering the physiological structure of the human body, and therefore could not be and were not proven. Appellant's conviction and sentence by the trial court was not supported by the Information nor was the Information supported by the evidence and this was denial of due proc-

ess and equal protection of the law under the Fourteenth Amendment to the Constitution of the United States.

While the factual situation in the present case is different, it presents a legal question similar to that in the case of *Byron Thornhill* v. *State of Ala.*, 310 U.S. 88; and the two Florida cases of *Houchins* v. *State*, 17 So.2d 82; and *Gibbs, Petitioner*, v. *Mayo, as Prison Custodian of the State of Fla., Respondent*, 81 So.2d 739; and said question was decided contrary to the decisions in the three cases cited.

I.

HOW AND WHEN FEDERAL QUESTIONS RAISED BELOW.

The question of the invasion of Appellant's rights under the Fourteenth Amendment to the Constitution of the United States was first raised in the Florida Appellate Court, Second District, on appeal by written brief and by oral argument.

The final judgment (*Per Curiam*) of the said Florida Appellate Court did not refer to the question (argued in Appellant's Brief) of Appellant's rights under the said Fourteenth Amendment (argued orally and in Appellant's brief in said Florida Appellate Court). However, it had the direct effect of denying these Constitutional rights.

J.

THE FEDERAL QUESTION PRESENTED IS SUBSTANTIAL.

The record shows the trial to have been dominated by the Prosecutor whose persistence and aggressiveness, in repeatedly asking improper and leading questions of

the State's witnesses, which colored the whole trial and brought forth a great amount of clearly incompetent testimony that was highly prejudicial, which Appellant seemed unable to cope with in any effective manner. There was testimony of an unsuccessful investigation to learn whether Appellant had an FBI record (R. 88-9); three references on cross-examination of Appellant's witnesses to a Supposed income tax charge against Appellant (R. 98-104-6) and reference to a supposed knife assault (R. 128); testimony of the unsuccessful use of bloodhounds—unsuccessful pursuit of an unidentified person through an orange grove (R. 91); finding in an orange grove of two rubber packs and two handkerchiefs (R. 55) none of which was identified with Appellant, distracted the attention of the jury and resulted in an unfair trial. All this was abetted by the Information charging simultaneous assault on two persons, on two occasions, which was never proven, and assault in a manner physically impossible of accomplishment considering the human physiological structure.

The above mentioned irregularities and the refusal of a bill of particulars (R. 20), preventing Appellant from proving an alibi, violated Appellant's Constitutional rights to due process and equal protection of the law and abridged his privileges and immunities under the Fourteenth Amendment to the Constitution of the United States.

We respectfully submit that this Court has jurisdiction of this appeal and that it is contrary to public interest and general welfare that anyone be convicted of offenses on an Information that charges the commission of acts that are impossible of accomplishment; acts not proven by the testimony which departs from the allegations of the Information; and that the case should be considered by the Court and opportunity given to file briefs and

make oral argument on the merits so that unfair criminal trials may be discouraged.

Respectfully submitted,

LLOYD D. MARTIN,
P. O. Box 1184,
St. Petersburg, Florida,
Counsel for Appellant.

APPENDIX "A".

Judgment and Sentence.

Comes now the Defendant immediately after the Court denied his Motion for New Trial for sentence to be pronounced upon him, and being asked by the Court if he had anything to say why the sentence of the law should not be passed upon him, offers nothing in bar thereto.

Therefore, the Court adjudges you, Vernon Ryals, to be guilty of the offense of Lewd and Lascivious Assault upon Female Children under the Age of Fourteen as charged in all three counts of the Information, for which you stand convicted by decision of the jury, and it is the sentence, order and judgment of the Court that you, Vernon Ryals, for your said offenses, be confined in the State Prison of Florida at hard labor for a term of Ten (10) Years.

It is further Ordered by the Court that a Supersedeas Bond be set in the amount of $5,000.00.

This March 17, A. D. 1958.

Minute Book 46, Page 480.

APPENDIX "B".

IN THE DISTRICT COURT OF APPEALS
OF FLORIDA.
SECOND DISTRICT.

JANUARY TERM, A. D. 1959.

VERNON RYALS, Appellant,
vs
STATE OF FLORIDA, Appellee.
} CASE No. 559.

Opinion filed February 20, 1959.

Appeal from the Criminal Court of Record for Polk County; R. H. Amidon, Judge.

E. C. Flood, Bartow, and L. D. Martin, St. Petersburg, for appellant.

Richard W. Ervin, Attorney General, and George R. Georgieff, Assistant Attorney General, for appellee.

PER CURIAM.

Affirmed.

KANNER, C. J., SHANNON, J., and SMITH, FRANK A., A. J., CONCUR.

APPENDIX "C".

IN THE SUPREME COURT OF FLORIDA.

JANUARY TERM, A. D. 1959.

TUESDAY, MARCH 31, 1959.

VERNON RYALS,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

The attorneys for petitioner have filed a motion that the Court review the order of the trial court in the above cause denying bail bond on appeal to this Court from the District Court of Appeals of Florida, Second District, and the same having been considered; it is ordered that said motion be and the same is hereby denied for apparent lack of jurisdiction of this Court in the cause.